

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OF THE UNITED STATES

In the Matter of)

Amendment of the Commission's)
Rules Regarding the 37.0 - 38.6)
GHz and 38.6 - 40.0 GHz Bands)

ET Docket No. 95-183
RM-8553

Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

PP Docket No. 93-253

To: The Commission

**EMERGENCY JOINT MOTION FOR EXTENSION OF TIME
TO FILE COMMENTS AND REPLY COMMENTS**

Thomas Domencich, Milliwave Limited Partnership,
Columbia Capital Corporation, Columbia Millimeter
Communications, L.P., and Microwave Partners (collectively,
the "Joint Movants"), by their attorneys and pursuant to
Section 1.46 of the Commission's Rules, hereby request that
the Commission extend the time for filing comments and reply
comments in the above-captioned docketed proceeding. Each
of the Joint Movants is an applicant for and/or a licensee
of facilities in the 38.6 - 40.0 GHz band, and will be
significantly affected by the proposed rules. In support
hereof, the following is respectfully shown.

1. At its open meeting on Friday, December 15,
1995, the Commission adopted a Notice of Proposed Rule
Making and Order in the above-captioned proceeding, in which
the Commission, inter alia, proposes new rules governing the

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37.0 - 40.0 GHz frequency bands. The FCC's Daily Digest for December 15, 1995, under the heading "News Releases", lists a News Release regarding the Commission's action. The actual text of the Notice of Proposed Rule Making and Order, however, is not listed under the heading "Texts", and the text was not in fact included in the set of FCC releases delivered on December 15, 1995 by the commercial service subscribed to by counsel's firm. That service, D.C. News and Data, has confirmed that the text of the Notice of Proposed Rule Making and Order was not made available to it by the Commission on December 15, 1995.¹

2. Plainly, the text of the item was not "released" on December 15, nor has "notice" of the item been given as required by statute and the Commission's rules.² See 5 U.S.C. § 553(b) ("General notice of proposed rule making shall be published in the Federal Register...."); 47 C.F.R. § 1.412. Neither the text of the item nor a summary thereof has appeared in the Federal Register. And, as noted, the text of the item was not available to the public

¹ Nonetheless, counsel to the Joint Movants obtained a copy of the text of the item, which purports to have been "Released, December 15, 1995". Counsel learned from third parties of the existence of the text approximately one week after December 15, 1995, and does not know the circumstances under which such other parties obtained a copy of the item.

² The News Release alone was not sufficient to constitute public notice of the Commission's action or the availability of the text. See MCI v. FCC, 515 F.2d 385, 390 (D.C. Cir. 1974).

in the Commission's offices on December 15, 1995. Only the release of the full text of a Commission order constitutes official action and notice thereof. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

3. In the ordinary course, the impact of the erroneous release date would have been negligible; the Commission simply would have released the full text to the public on the next business day. But events since December 15, 1995 have been far from ordinary. Because of the failure of the federal government to enact legislation appropriating funds for the operation of the Commission for Fiscal Year 1996 and the expiration of a Continuing Resolution permitting such operation to continue during negotiations over proposed appropriations legislation, the Commission ceased to operate effective December 16, 1995 (with certain exceptions for emergency functions). Funding was not approved until January 5, 1996, and the agency was to have reopened on Monday, January 8, 1996. Severe winter storms, however, resulted in the closing of all federal government offices from January 8 through January 10, 1996. Thus, the Commission was not open a single day between December 16, 1995 and January 10, 1996. During this time the text of the subject item has been neither officially released nor publicly available to individuals and entities

wishing to review the item and file comments in response to the Notice of Proposed Rule Making.³

4. The text of the Notice of Proposed Rule Making provides that comments are due January 16, 1996, and reply comments are due January 31, 1996. Based on the circumstances described herein,⁴ and assuming that the text of the item will in fact be released on January 11, 1996, good cause is shown for extending the deadline for submitting comments by thirty days, until February 13, 1996. Moreover, in light of the substantial interest generated within the industry by the Notice of Proposed Rule Making and Order and the significant impact the proposed rules are likely to have on applicants and licensees, good cause also exists for extending the reply comment period to March 13, 1996, thereby providing interested parties a fair opportunity to obtain, review, and reply to all comments.⁵ A grant of these requested extensions will satisfy the requirement that "[a] reasonable time will be provided for

³ Moreover, the comment period encompassed several holidays that have diminished the ability of potential commenters, including each of the Joint Movants, to respond in a comprehensive fashion to the proposed rules.

⁴ It is noted that a forecasted winter storm is expected to result in the closure of the federal government again on Friday, January 12, 1996, and that Monday, January 15, 1996 is a federal holiday.

⁵ If the text of the item is not released today, then the deadline for submitting comments should be extended until 30 days from the actual release date, with a 30-day period allowed for reply comments.

the submission of comments." 47 C.F.R. § 1.415(b). The circumstances further warrant immediate grant of this Emergency Motion.⁶

WHEREFORE, the foregoing premises duly considered, the Joint Movants respectfully request that the Commission immediately issue an Order granting this Emergency Motion and extending the comment date until February 13, 1996 and extending the reply comment date until March 13, 1996.

Respectfully submitted,

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⁶ Obviously, the circumstances justifying an extension of time also precluded the filing of this Emergency Motion until today. A waiver of Sections 1.46 and 1.415(e), which require that motions for extensions of time to file comments in rulemaking proceedings be filed seven days prior to the comment date, therefore is requested.

CERTIFICATE OF SERVICE

I, Lois L. Trader, a secretary with the law firm of Bryan Cave LLP, hereby declare that I have on this 11th day of January, 1996, caused a true and correct copy of the foregoing Emergency Joint Motion for Extension of Time to File Comments and Reply Comments to be delivered, by hand, to:


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